

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

OAKIS WILLIAM WHITE, III,)
Petitioner,) Civil Action No. 7:22cv00487
v.)
HAROLD W. CLARKE,) By: Elizabeth K. Dillon
Respondent.) United States District Judge

OPINION AND ORDER

Oakis William White, III, a Virginia inmate proceeding *pro se*, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his 2011 conviction and sentence in Bristol Circuit Court for forcible sodomy. White filed his petition in the Eastern District of Virginia in June 2022, and the petition was subsequently transferred to this court. On October 20, 2022, this court entered a conditional filing order advising White that his petition appeared to be untimely. The order directed White to respond with any additional argument or evidence on timeliness that he wished to submit within 20 days. Despite being given the opportunity to do so, White has never submitted any additional evidence or argument. Having determined that the petition appeared to be untimely after preliminary review of the petition and of state court records available online, pursuant to Rule 4 of the Rules Governing § 2254 Cases, and having given White notice and the opportunity to respond as required by *Hill v. Braxton*, 277 F.3d 701, 706–07 (4th Cir. 2002), the court concludes that the petition is untimely and will dismiss it *sua sponte*.

On May 5, 2011, a jury convicted White of first degree murder and recommended a sentence of life in prison. The Bristol Circuit Court imposed that sentence following a sentencing hearing on July 7, 2011, and entered its final judgment order on August 4, 2011. The

Court of Appeals of Virginia refused his petition for appeal. *White v. Commonwealth*, No. 175011 (June 19, 2012). White did not appeal to the Supreme Court of Virginia, nor did he file any petition for state habeas corpus. White executed his original § 2254 petition on June 8, 2022, and the petition was received by the court on June 22, 2022.

Under the Antiterrorism and Effective Death Penalty Act of 1996, a petitioner has one year in which to file a federal habeas corpus petition. This statute of limitations runs from the latest of:

- (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
- (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;
- (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

28 U.S.C. § 2244(d)(1).

White has provided no allegations to suggest that subsections (B), (C), or (D) apply. Therefore, the statute of limitations runs from the date on which his conviction became final by the expiration of the time for seeking direct appeal. The Court of Appeals entered its order on June 19, 2012, and White had 30 days to appeal that judgment to the Supreme Court of Virginia. Rule 5:14, Rules of S. Ct. Va. Thirty days expired on July 19, 2012, and the one-year limitation

period began to run on that date. The statute of limitations expired on July 19, 2013.

Accordingly, the petition filed in June 2022 was untimely by nearly nine years.

It is hereby **ORDERED** that White's § 2254 petition is **DISMISSED** as time-barred, and this action is **STRICKEN** from the active docket of the court.

Further, finding that there has been no showing of the denial of a constitutional right as required by 28 U.S.C. § 2253(c), a certificate of appealability is **DENIED**.

The Clerk shall send a copy of this opinion and order to Mr. White.

Entered: February 9, 2023.

/s/ Elizabeth K. Dillon
Elizabeth K. Dillon
United States District Judge